The Attorney General of Texas

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An Equal Opportunity/
Affirmative Action Employer

Mr. William R. McClellan
Executive Director
Housing Authority of the City
of Houston
P. O. Box 2971
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Open Records Decision No. 298

Re: Whether employment resumes, correspondence with a consultant and a consultant's working papers are available under the Open Records Act

Dear Mr. McClellan:

You ask whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to release these materials: (1) employment resumes of certain housing authority employees; (2) correspondence between you and a management systems consultant to the authority dating back to January 1979; (3) the amount of disability payments made to a certain individual; and (4) correspondence between the authority and a firm of certified public accountants hired to audit the authority.

A housing authority is a "governmental body" within the meaning of the Open Records Act. Open Records Decision No. 268 (1981).

You contend that the employment resumes are embraced by section 3(a)(2) of the act, which excepts from required disclosure:

> information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(2) is only triggered when the release of information would lead to a "clearly unwarranted" invasion of one's personal privacy. See Open Records Decision Nos. 269, 260 (1981); 245 (1980). The section guards against the disclosure of intimate details of a highly personal nature. Open Records Decision Nos. 269, supra; 224 (1979); 168 (1977). We have examined these resumes, and conclude that there are no grounds for invoking section 3(a)(2) in this instance.

The information contained in the resumes is purely factual, and is akin to that which was held disclosable as against a section 3(a)(2) claim in Open Records Decision No. 264 (1981), i.e., information regarding the formal education, licenses and certificates, employment experience, professional awards and recognition, and membership in professional organizations of an applicant for public employment. See also Open Records Decision No. 257 (1980). Any minimal intrusion into the employees' privacy interests that might result from the release of these resumes will, moreover, clearly be outweighed by the public interest in having access to details concerning their professional backgrounds and experience.

With respect to the correspondence between you and the management consultant, you invoke section 3(a)(11). That section excepts from disclosure:

> inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

We have frequently stated that this section is:

> designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief with regard to administrative action.

Attorney General Opinion H-436 (1976); Open Records Decision Nos. 231, 222 (1979); 213, 211 (1978). It protects the internal deliberative process of the public's decisionmakers. Open Records Decision No. 209, supra. It applies where, as here, the information in question is provided by or to an outside consultant of the governmental body. Open Records Decision No. 192 (1978).

Virtually all of the correspondence in question clearly fits into the "advice, opinion and recommendation" mold. The portion which cannot be so characterized, moreover, is so small and so inextricably intertwined with the opinion and recommendation material as to make separation unfeasible. We therefore conclude that you may withhold this correspondence in its entirety.

The third part of your inquiry concerns the amount of "disability payments" made to an individual who is a former employee of the authority. You advise that the term "disability payments" refers to medical disability payments made by a private insurance carrier under a voluntary disability insurance plan covering employees who are either sick or have been injured in an accident. You cite Attorney General Opinion H-626 (1975) for the proposition that this information

is not disclosable to parties other than the employing unit and the claimant.

Attorney General Opinion H-626 answered the Texas Employment Commission's inquiry as to whether certain information regarding unemployment compensation had to be disclosed. The opinion concluded that article 5221b-9, V.T.C.S., which makes certain information in the commission's possession confidential, brought the information in question within the scope of section 3(a)(1) of the Open Records Act, which excepts from required disclosure:

> information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

We are aware, however, of no law which makes the information here confidential within the meaning of section 3(a)(1). Attorney General Opinion H-626 is therefore inapposite.

You suggest that public disclosure of the amount of disability payments made to a former employee might result in a "clearly unwarranted" invasion of that individual's personal privacy within the meaning of section 3(a)(2). As we have already noted, however, section 3(a)(2) protects against the disclosure of "intimate details of a highly personal nature." We do not believe the information in question may reasonably be so characterized, and we therefore conclude that it is not excepted from disclosure under section 3(a)(2).

The fourth item in question is the correspondence between the authority and the firm of certified public accountants hired to audit the authority. This particular firm never completed its audit, which was to cover the years 1978 and 1979. Another firm was later hired to conduct an audit covering those years as well as the year 1980. You contend that this correspondence may be withheld, inasmuch as it relates to an audit which has not been completed, and that the Open Records Act only requires the disclosure of completed audits. See §6(1).

We cannot accept this argument. The correspondence in question has nothing to do with the audit itself. It merely discusses the mechanics involved in preparing the audit and the capabilities of the particular firm to do so. It also describes the items which the proposed audit was to cover. While it is true that section 6(1) only requires the disclosure of completed audits, we do not believe it can reasonably be inferred that the legislature intended for this provision to be used as a basis for withholding information such as this, which is not part of the audit, and which reveals none of the information which will be in the completed audit. We are aware of no

other basis for withholding this correspondence, and we therefore conclude that it must be released.

Very truly yours,

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